

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

FLOYD DENNIS CLARK

Claimant

V.

EATON CORPORATION

Respondent

AND

OLD REPUBLIC INSURANCE CO.

Insurance Carrier

Docket No. 1,052,143

ORDER

Claimant, through John M. Ostrowski, requested review of Administrative Law Judge Thomas Klein's June 10, 2016 Post-Award Medical Award (Award). P. Kelly Donley and Travis L. Cook appeared for respondent and insurance carrier (respondent). The case was placed on the summary docket for disposition without oral argument.

RECORD

The appeal record is the same as that considered by the judge and consists of the March 29, 2016 post-award hearing transcript and the exhibit attached thereto, in addition to all pleadings contained in the administrative file.

ISSUE

Claimant wants respondent to pay his wife \$218.56 for wages she was not paid when she did not work two days to drive him to medical appointments. After citing K.S.A. 44-515, the judge denied claimant's request.

Claimant contends the judge erred in denying his request under K.S.A. 44-515, arguing the relevant statute is K.S.A. 44-510h(a), which compels employers to provide medical treatment to cure and relieve the employee of the effects of an injury, including transportation to medical appointments. Claimant asserts the medical treatment he received was meant to relieve the effects of his injury and he needs a driver to take him to his appointments because he is unable to drive. Claimant contends respondent would far exceed the cost of reimbursing his wife by hiring transportation. Respondent maintains the Order should be affirmed because the Kansas Workers Compensation Act and administrative regulations do not require it to grant claimant's request.

Is respondent required to reimburse claimant's wife for wages she would have earned, but for driving him to his medical appointments?

FINDINGS OF FACT

On March 29, 2013, the judge awarded claimant benefits under the Kansas Workers Compensation Act, including future medical treatment stemming from a November 20, 2008 accidental injury. As part of his work-related medical treatment, claimant receives nerve ablation injections (injections) from an authorized physician in Wichita.

Claimant was scheduled for injections at 6:30 a.m. on October 29, 2015 and November 12, 2015. He was not to drive for about 24 hours thereafter. Because claimant would not be able to drive the approximate three hour trip from Wichita to his home near Meriden, his wife drove him to and from the appointments. They stayed in a motel the night before each appointment. As a result of claimant's wife driving him to the appointments, she did not work two days in which she could have earned \$218.56.

On December 8, 2015, claimant filed an application for post award medical seeking payment of "mileage/driver/motel expenses." Respondent stated it paid mileage and motel expenses to claimant.¹ Page two of the judge's Award stated:

It appears to the Court that the claimant might be entitled to mileage from his home in Meriden Kansas plus \$15.00 per day. But that is not his request. His request is for wage reimbursement for his wife to take off work and drive him to his appointment. The Court does not have the statutory authority to grant claimant's request. Claimant's request for wage reimbursement for his wife is denied.

Claimant appealed.

PRINCIPLES OF LAW

Kansas workers compensation appellate cases emphasize literally interpreting and applying plainly-worded workers compensation statutes.²

K.S.A. 2008 Supp. 44-510h(a) states:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, . . . and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

¹ Respondent's Brief at 2.

² *Hoesli v. Triplett, Inc.*, 303 Kan. 358, 361 P.3d 504, 508-09 (2015).

K.S.A. 44-515(a) provides, in pertinent part:

If the employee is notified to submit to an examination before any health care provider in any town or city other than the residence of the employee at the time that the employee received an injury, the employee shall not be required to submit to an examination until such employee has been furnished with sufficient funds to pay for transportation to and from the place of examination at the rate prescribed for compensation of state officers and employees under K.S.A. 75-3203a and amendments thereto, for each mile actually and necessarily traveled to and from the place of examination, any turnpike or other tolls and any parking fees actually and necessarily incurred, and in addition the sum of \$15 per day for each day or a part thereof that the employee was required to be away from such employee's residence to defray such employee's board and lodging and living expenses.

K.A.R. 51-9-11 states:

(a) It shall be the duty of the employer to provide transportation to obtain medical services to and from the home of the injured employee whether those services are outside the community in which the employee resides or within the community.

(b) The employer shall reimburse the worker for the reasonable cost of transportation under the following conditions:

(1) if an injured worker does not have a vehicle or reasonable access to a vehicle of a family member living in the worker's home; or

(2) if the worker, because of the worker's physical condition, cannot drive and must therefore hire transportation to obtain medical treatment. Reimbursement may include, among other things, reimbursement for the cost of taxi service, other public transportation, and ambulance service, if required by a physician, and for the cost of hiring another individual to drive the worker for medical treatment. Any charges presented to the employer or insurance carrier for payment shall be a fair and reasonable amount based on the customary charges for those services.

(c) If an injured worker drives that worker's own vehicle or drives, or is driven in, a vehicle of a family member living in the home of the worker, and if any round trip exceeds five miles, the respondent and insurance carrier shall reimburse the worker for an amount comparable to the mileage expenses provided in K.S.A. 44-515.

(d) In any dispute in regard to charges for mileage expenses, and on application by any party to the proceedings, the reasonable cost of transportation shall be determined by a hearing before a workers compensation administrative law judge.

ANALYSIS

Respondent has a duty to provide claimant with medical treatment as may be reasonably necessary to cure and relieve the effects of his injury. Part of that duty is providing transportation to and from medical appointments. In cases where claimant is driven to an authorized medical appointment in a vehicle of a family member living in the worker's home, K.A.R. 51-9-11(c) spells out respondent's duty to pay claimant an amount comparable to the mileage expenses provided in K.S.A. 44-515.

Claimant argues it would be less expensive for respondent to pay his wife for transporting him in lieu of hiring a driver. Notwithstanding claimant's position, which is almost assuredly true, Kansas law and the administrative regulation do not impose a duty on respondent to pay claimant's wife for wages she would have earned but for taking claimant to his medical appointments. If respondent paid claimant medical mileage and transportation expenses in accordance with K.S.A. 44-515(a) and K.A.R. 51-9-11(c), no other payment is legally mandated.

CONCLUSION

WHEREFORE, the Board affirms the June 10, 2016 Post-Award Medical Award.

IT IS SO ORDERED.

Dated this _____ day of July, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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